

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a client of VR whose case has been at a standstill for several years. Following several failed work experiences arranged by VR, the petitioner was notified in December of 1999 that the petitioner needed to get a mental status exam from a competent psychologist which VR would pay for. If she was found to be in need of psychiatric services, the petitioner was expected to take part in treatment at which time a new employment plan would be developed for her. The petitioner was told that if she did not take these steps in thirty days her case would be closed. The petitioner did not appeal that decision.

2. The petitioner did not seek a psychological evaluation but VR did not close her case. Rather VR decided to put it in a suspended status.

3. In January of this year, the petitioner contacted VR asking why it insisted on a mental status evaluation. VR responded to the petitioner in writing that the work experiences she had in the past indicated that she had the ability and knowledge to perform job duties but that her job placements had failed due to difficult relationships with the employers, employees and the public. VR said that it hoped that the mental status evaluation and subsequent therapy would help VR in getting her long term employment.

4. The petitioner appealed VR's position as set out in that letter. After several continuances and at least one failure to show for her hearing, the matter was finally heard on July 9, 2004.

5. The VR regional manager testified that the petitioner's VR eligibility began eight years ago and her case is still open. However, he said that a realistic work plan cannot be developed for the petitioner until a mental status exam and mental health therapy are engaged in by the petitioner. He based this opinion on the failure of all her prior job placements based on reports from the employers that

she had difficult interpersonal relationships with employers, employees and the public. Those reports including incidents of out-of-control anger punctuated with swearing and profanity. He and his staff had also experienced this behavior in dealing with the petitioner. Other than paying for the mental health consultation, he said there was nothing more VR could realistically offer her. It was expected that if she cooperated and got some treatment with controlling her anger, that VR could go forward in formulating a new vocational plan and providing employment services to her. The regional manager's belief that the petitioner may have psychological problems which inhibit her ability to maintain employment is a reasonable one and his request for a mental status exam is found to be based solely on this reasonable belief.

6. The petitioner vehemently disagrees with the statement of VR. She says she was liked by co-workers, does not use profanity and does not have any mental health issues. She says that she lost one job due to sexual harassment and the other due to a miscommunication about when she was to work. She says that VR's request is nothing but character assassination. She describes herself as persistent but not belligerent.

7. During her testimony the petitioner had difficulty staying on topic, seemed driven to keep speaking at length, was not easily interrupted and exhibited a belief that others were trying to persecute her because of her race. She attributed the decisions of VR as based on stereotypical and ignorant views of the cultural mores of black people. She does not want VR to help her get a job, she just wants support services to enable her to find her own job. The petitioner's demeanor, including her vehement refusal to even consider an evaluation, support VR's concerns and undermine the accuracy of her statements.

ORDER

The decision of VR to deny services to the petitioner until she complies with a psychological assessment is upheld.

REASONS

Federal regulations governing the federally funded VR program require states to assess the needs of individuals in the program and to formulate an individual written rehabilitation plan. 34 C.F.R. § 361.45(c)(2)(i). The assessment must be limited to factors which impact on employment and rehabilitation needs including an analysis of

potential psychological and psychiatric factors. 34 C.F.R. § 361.45(c)(2)(ii)(A) and (B).

In this case, VR officials, who have an eight-year working knowledge of the petitioner including her failed work trials, have ample reason to believe that the petitioner may have psychological factors which are impeding her ability to maintain employment. VR must therefore obtain information regarding the exact nature of those problems so that they can be addressed as part of the rehabilitation plan. The petitioner has a right to refuse to cooperate with this process but her assertion of this right effectively ties the hands of those who would help her. It is not possible to design a realistic rehabilitation plan without this information. Without a plan in place to which both parties can agree, it is not possible to provide work supports to the petitioner.

VR is following the federal regulations when it refuses to provide supports for her unless she cooperates in obtaining assessments needed to formulate her plan and its decision must be upheld by the Board. Fair Hearing Rule 17, 3 V.S.A. § 3091(d). The petitioner would be well advised to cooperate in obtaining assessments of her condition if she wishes to obtain meaningful assistance from VR.

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